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ABSTRACT

This paper examines issues of academic freedom and the community's role in a review of public and legal events leading to the court's striking down of the 1940 appointment of Bertrand Russell to teach at the City College of New York. Russell was to teach three philosophy courses relating logic, mathematics, and science to philosophy. Episcopal Bishop William T. Manning publicly challenged the appointment and other church leaders joined him from various denominations. The New York Board of Higher Education refused to withdraw the appointment and consequently Mrs. Jean Kay sought to block it by filing a taxpayer's suit to compel the Board to void the appointment on the grounds that Russell was both alien and immoral. Justice John E. McGeehan then struck down the appointment arguing that Russell was not a citizen, was not fit under civil service rules, and was immoral. McGeehan denied a motion by the Corporation Counsel of the City to dismiss Kay's petition on the ground that the citizenship provisions of the law were not binding on the Board of Higher Education. McGeehan argued that his court had power to act in criminal matters and that Russell was guilty of inciting to criminal homosexual activity. The paper argues that McGeehan's judgment was a legalistic formulation of the views of a sizable body of people that see education as simply a tool of social control. (Contains 21 footnotes.) (JB)

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THE RUSSELL CASE:

ACADEMIC FREEDOM VS. PUBLIC HYSTERIA

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Bertrand Russell came to this country in 1939 for an extended stay. He accepted an appointment to teach at the University of Chicago, then one at the University of California at Los Angeles. Toward the end of the academic year 1939-1940 he was invited to teach the following courses at the City College of New York:

> Philosophy 13: a study of modern concepts of logic and its relation to science, mathematics and philosophy;
> Philosophy 24B: a study of the problems in the foundations of mathematics; and
> Philosophy 27: the relations of pure to applied sciences and the reciprocal influence of metaphysics and scientific theories.[1]

These courses were in the day division of liberal arts, which had an all-male student body. The formal letter of notification of appointment sent by Dr. Ordway Tead, Chairman of the New York Board of Higher Education, stated in part:

> I know that your acceptance of this appointment will add luster to the name and achievements of the Department and the College, and that it will deepen and extend the interest of the College in the philosophic bases of human living.[2]

Yet everyone did not agree with this generous and enlightened viewpoint. The appointment was speedily challenged by Bishop William T. Manning of the Protestant Episcopal Church, his denunciation of Russell swiftly taken up by other churchmen, Protestant and Catholic, and by the New York City Council. In the wake of this clamor, the Student Council of the City College of New

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[1]Paul Edwards, "How Bertrand Russell Was Prevented from Teaching at the City College of New York," *in* Bertrand Russell, *Why I Am Not A Christian,* ed. Paul Edwards (London, 1957), pp. 181ff; Henry Seidel Canby, "Bertrand Russell," *Saturday Review of Literature* (March 30, 1940), p. 8.

[2]Cited in Horace M. Kallen, "Behind the Bertrand Russell Case," *in* John Dewey and Horace M. Kallen, eds., *The Bertrand Russell Case* (New York, 1941), p. 18.

York published a resolution applauding the appointment.[3] At this time and throughout the events that followed, Russell was teaching in California. In preparation for taking up his post in New York, he submitted to the President of U.C.L.A. his resignation effective at the end of the academic year. It was accepted shortly before Russell, hearing of the turmoil in New York, tried to withdraw it.[4]

When the New York Board of Higher Education held firm against the growing public outcry against Russell, a Mrs. Jean Kay filed a taxpayer's suit to compel the Board to void the appointment. The Court accepted the suit despite the fact that it was legally dubious whether challenge of an individual appointment could be the proper matter for a taxpayer's suit. Moreover, since Mrs. Kay's children would normally go to Brooklyn College in the New York City system, since the daughter for whose morals she expressed concern could not attend C.C.N.Y. in any case, and since Russell's appointment would have been terminated by reason of age before any of her children were old enough to attend college, the challenge came from a person who could hardly be said to have had a legal interest in the matter.[5]

The suit opposed Russell's appointment on the ground that Russell was both alien and immoral. A brief was entered that described Russell's works as "lecherous, salacious, libidinous, lustful, venerous, erotomaniac, aphrodisiac, atheistic, irreverent, narrow-minded, untruthful, and bereft of moral fiber," dismissed his philosophy as "cheap, tawdry, worn out, patched up fetishes and propositions, devises [sic] for misleading the people," and charged him with practicing nudism, writing pornographic poetry, advocating homosexuality, and, somewhat anticlimactically, of being an alien. Two days later, Justice John E. McGeehan, an Irish Catholic best known for his attempt to have Martin Luther's visage deleted from a courthouse mural, struck down the appointment on the ground that

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[3]Though several editorials claimed that Manning was speaking officially for his church, such was not the case. For a discussion of this point by a fellow churchman, see Guy Emery Shipler, "The Attitude of the Episcopal Church," in Dewey and Kallen, pp. 151ff.

[4]Bertrand Russell, *The Autobiography of Bertrand Russell, 1914-1944* (Boston, 1968), p. 333.

[5]Walton W. Hamilton, "Trail by Ordeal, New Style," in Dewey and Kallen, p. 78. The many legal irregularities of the proceedings are amply covered not only in this essay originally published in the *Yale Law Journal*, but also in "The Bertrand Russell Litigation," *The University of Chicago Law Review*, VIII (1941), 316ff, and "The Bertrand Russell Case: The History of a Litigation," *Harvard Law Review*, CIII (1940), 1192ff. Interestingly, though Russell's opponents claimed to represent offended parents, the Parent Association of City College supported the Board of Higher Education's stance. See Edwards, p. 188.

> (a) Bertrand Russell was not a citizen and had not declared his intention to become a citizen; (b) the appointment did not comply with Article V, Subdivision 6, of the Constitution of the State of New York with reference to appointments in civil service on the basis of merit and fitness; and finally, (c) because the appointment was against public policy because of the teachings of Bertrand Russell and his immoral character.[6]

The dearth of similar cases leaves us forever in doubt whether the justice would with similar reasoning have removed less colorful professors from their chairs for failure to take a civil service examination or whether he would have voided the appointment of the distinguished Catholic convert, Jacques Maritain, then teaching in one of the city colleges, because he had not applied for citizenship.[7] Its tortured reasoning and frequent inconsistencies are clear indication that Judge McGeehan's decision is simply a verbalization of the frustration of an offended segment of the community disguised none too well by the legal trappings.

Immediately after his initial comment, Justice McGeehan denied a motion by the Corporation Counsel of the City of New York to dismiss Mrs. Kay's petition on the ground that the citizenship provisions of the Education Law were not binding on the Board of Higher Education. That the stature in question obviously refers to the lower schools, that New York colleges (including McGeehan's alma mater) regularly hired distinguished foreigners and that Russell had in any event ten months in which to declare his intention of becoming a citizen, swayed the judge not at all. He noted that the motion could not be sustained because two other causes had been alleged in the petition, yet he obviously gave weight to the consideration of citizenship in his decision. In point of fact, he gratuitously asserted that Russell would be denied citizenship were he to apply for it![8]

In the next portion of the opinion, he cited a number of precedents dealing with the necessity of competitive civil service examinations for prospective faculty members at state schools. Yet if public institutions of higher education in New York were in fact required to hire only persons who had taken and passed civil service examinations, virtually every faculty appointment in those colleges would have been illegal, for faculty candidates were not in practice required to take such tests. But Justice McGeehan's position transcended mere rationality, as witness this emotional comment:

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[6]Dewey and Kallen, pp. 20-21; John E. McGeehan, "Decision of Justice McGeehan," in Dewey and Kallen, p. 213.

[7]Edwards, pp. 196-197.

[8]Norris R. Cohen, "A Scandalous Denial of Justice," *in* Dewey and Kallen, p. 137; Edwards, p. 194; McGeehan, p. 215.

> If there were only one person in the world who knew anything about philosophy and mathematics and that person was Mr. Russell, the taxpayers might be asked to employ him without examination, but it is hard to believe, considering the vast sums of money that have been spent on American education, that there is no one available, even in America, who is a credit both to learning and public life.[9]

This is rhetorically clever, referring none too obliquely to Russell's status as an alien while appealing to native self esteem, but it is hardly germane and establishes McGeehan as advocate rather than arbiter.

The justice then moved an to the third ground, that which he seems to have felt most compelling: Russell's alleged immorality. He demonstrated this immorality first by random, out-of-context citations from three of Russell's books, *Education and the Modern World, Marriage and Morals,* and *What I Believe*, concerning companionate marriage. As against this notion of companionate marriage he cited the provisions of New York's Penal Law regarding rape, abduction, adultery and solicitation, commenting:

> When we consider the vast amount of money that the taxpayers are assessed each year to enforce these provisions of the law, how repugnant to the common welfare must be any expenditure that seeks to encourage the violation of the provisions of the Penal Law.[10]

The measure of distortion in Judge McGeehan's view here becomes quite apparent. The notion that speculations on social and sexual mores constitute incitement to break the law does simultaneous violence to our notions of intellectual freedom, free speech and the role of law in society. John Dewey noted that "the method used by the Court gives convincing evidence of the latter's intent to make a case without reference to the state of fact."[11] The observation has greatest validity in reference to McGeehan's attempt to label Russell as immoral. That McGeehan felt himself competent to legislate morality is remarkable enough; that he should have done it in terms that would have been actionable were he not protected by his judicial position is damning.

Perhaps the most revealing point Justice McGeehan made was in regard to Russell's ability:

A person we despise and who is lacking in ability cannot

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[9]McGeehan, p. 217.

[10]McGeehan, p. 221.

[11]John Dewey, "Social Realities Versus Police Court Fictions," *in* Dewey and Kallen, p. 66.

> argue us into imitating him. A person whom we like and who is of outstanding ability does not have to try. It is contended that Bertrand Russell is extraordinary. That makes him the more dangerous.[12]

McGeehans' world is one in which all is dangerous, especially the extraordinary. In such a world, the school should not be in the business of exposing pupils to peril by opening their minds, but should be an agency of social control doggedly carrying out the difficult business of conserving the status quo. In such a world, truth has already been found through revelation and preserved through inheritance, leaving small scope for any further search. That is why Justice McGeehan held that "academic freedom. . . is the freedom to do good and not to teach evil."[13] When good and evil are predefined, freedom becomes coercion.

Finally, on the twelfth page of thirteen, McGeehan concedes that Russell's views on infant masturbation, nudity, religion and politics, as well as his personal life, are the proper province of the Board of Higher Education. He justifies the action of his court on the ground that it has power to act in criminal matters and states that Russell is guilty of such acts because he incites to criminal activity, the felony of homosexual practice. This he establishes by citing from *Education and the Modern World:*

> It is possible that homosexual relations with other boys would not be very harmful is they were tolerated, but even then there is danger lest they should interfere with the growth of normal sexual life later on.[14]

To term such a comment incitement is incredible, but the mere presence of the bogey word "homosexual" must have precluded intelligent reaction to the passage on the part of the judge and others.

Such was Justice McGeehan's opinion. It is only fair to him to note that his statements were but a legalistic formulation of some exotic logic prevalent in the community at the time. Only the day before his decision came down, *Commonweal*, a journal of lay Catholic opinion, managed to portray the appointment as part of a huge conspiracy against Christianity and label Russell as soft on

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[12]McGeehan, p. 222.

[13]*Ibid.*; See Yervant H. Krikorian, Chairman, and Associates of the Department of Philosophy, C.C.N.Y., "The College, the Community, and the Bertrand Russell Case," *in* Dewey and Kallen, pp. 171-184.

[14]McGeehan, pp. 224-225.

Communism.[15] Shortly after the decision a writer in the Jesuit weekly, *America*, defended the rights of parents against "a small. dictatorial clique," the Board of Higher Education, and managed the customary references to Nazi Germany and Soviet Russia.[16] And in the following week's issue, a Jesuit amply demonstrated that Justice McGeehan had no monopoly on missing the point by averring that "our penitentiaries are full of men and women whom society has punished for practicing what Bertrand Russell preaches."[17]

The legal oddities were not yet ended. McGeehan denied a motion to make Russell a party to the proceedings on the ground that he had no legal interest in it, and denied counsel for the Board of Higher Education permission to appeal. In any event, the Corporation Counsel we becoming less and less aggressive as opposition political pressure mounted.[18] The denial was taken to an Appellate Court which refused briefs from the Lawyer's Guild, the Bertrand Russell Committee, the Committee for Cultural Freedom, the College Teacher's Union and the Women's City Club but did accept one from those members of the Board of Higher Education opposing the appointment. One of Russell's defenders subsequently noted,

> This is the first case on record where a court stepped in to void an appointment by a board of education on petition of a single citizen, or denied to a school board the right to engage private counsel and to the appointee involved the right to a hearing.[19]

Trailblazing is not always in the interest of enlightenment or progress.

The issues raised by the Russell Case are many and complex. They include problems of law and government, problems of civil and academic freedom, problems of the nature and mode of inquiry, the criteria, propagation and effects of moral and religious dogmas,

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[15]Michael Willams, "Views and Reviews," *Commonweal* (March 29, 19400, pp. 491-492.

[16]John P. Delaney, "Russell Is a Creature of a Clique of Dictators: He Is Being Forced Upon the Decent People of New York," *America* (April 6, 1940), pp. 708-709.

[17]Paul L. Blakely, "The Teacher and Caesar's Wife," *America* (April 13, 1940), p. 7.

[18]Robert M. MacIver, *Academic Freedom in Our Time* (New York, 1955), p.155.

[19]Horace M. Kallen *in* Dewey and Kallen, pp. 23-25.

power politics and prejudice.[20] To say that these were not properly aired in the Russell Case is to state the obvious. There is some question whether a fruitful dialogue would have been possible with people able to believe that Bertrand Russell would have incited to abduction and rape by lecturing in mathematics and philosophy. No such thing had happened at other places where Russell had taught. But it is plain that right reason had little place in the decision.

One writer on academic freedom has summed up the significance of the case in the following points:

1. The decision presumed the right of a court to void an appointment to a tax-supported institution because of objections to the opinions of the nominee;

2. "The judge voided the decision of the properly constituted administrative authority, essentially not because that authority had exceeded the bounds of its competence but because he disapproved of the course it took."

3. The chief danger is perhaps the assumption of the existence of "an establishment of morals."[21]

The first two of these can perhaps be set down as attributable to the foibles of a particular jurist, but the third is the crux of the matter, having more to do with the temper of Russell's attackers in general. The Russell Case must be seen in terms of societal process. It came about because a sizeable body of people in this country regards education simply as a tool of social control designed to preserve, protect and defend what the community accepts as truth without seeking to challenge or extend it. Such a pitch of virulence was reached because this viewpoint is appealing to people who nurture social grievances and are ready to focus them on a given cause or crusade for the catharsis involved. The great history of academic freedom cannot be written without reference to the dynamics of pressure groups, the mental and emotional processes of zealots, the mechanisms of public hysteria, and the vulnerability of the legal process to all of these.

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[20]Richard McKeon, "The Problems of Education in a Democracy," *in* Dewey and Kallen, pp. 94-95.

[21]MacIver, pp. 155-157.